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Since broadcast and cable operators owe their very existence to the public airwaves, whose fiduciary stewardship lies with the Federal Communications Commission, the NAACP asserts that the concept of equal employment opportunity is both legally and morally justified, and that responsibility to enforce such obligations falls squarely on the Agency.

Therefore, the NAACP supports the need of a meaningful FCC EEO guidance program for the broadcast and cable industries. We also strongly associate ourselves with the comments of the Minority Media and Telecommunications Council (MMTC) et al., as presented by its Executive Director David Honig, Esq. However, there are certain specific areas of the proposed rule in which we find them troubling. Therefore the NAACP offers the below comments which address these particular concerns.

#### **SIZE OF CLASS EXEMPTED BY PROPOSED RULE**

The proposed rule solicits comments to support the broadening of the prior's rule's exemption provisions. The NAACP wishes to offer NO such support for widening what was, in the organization's opinion, an already over-generous arrangement for "small" station operators.

To the contrary, this commenter feels that no employer should be exempt from the concept of equal opportunity employment. The benefits of diversity are equally applicable regardless of size of the employing entity, absent special and compelling circumstances. With increasing automation and advances in computer technologies, the capability and reach of a station is hardly a function of the size of its employment number. Furthermore, increasing specialization of stations in terms of product and audience increases the pool of outlets, and is likely to increase industry employment. Widening the minimum number of employees to be exempted will clearly have a multiplier effect by diminishing the total number of establishments covered by the new rule.

Many smaller stations are being purchased by larger corporations or wealthy groups of individual investors. The thought of such outlets being "mom and pop" operations are merely illusory and figments of a past reality. Requiring a minority outreach program does not require any additional hiring or any increase in the employment ceiling. It does require effort, however, though the proposed rule offers broad and flexible options in the exercise of such effort.

Small and "medium-sized" establishments (which the proposed rule might inadvertently condense into a single category) offer unparalleled career opportunities to a workforce, which is traditionally mobile. Terminating the requirement of an outreach obligation

would, in effect, cut off large numbers of minority employees seeking midlevel career enhancing opportunities for advancement.

Furthermore, the so-called 'small' stations offer unique first-time employment opportunities for those seeking to "break into" the industry. The enlargement of the exempted category would severely restrict the opportunities to obtain these "starter" positions.

Therefore, the NAACP would strongly oppose the widening of any exempted category from the requirements of the Agency's EEO provisions.

## **SCOPE AND NATURE OF THE MINORITY OUTREACH PROGRAM**

The NAACP is supportive of the FCC's rationale for creating flexible and varied options to meet the objectives of a minority outreach program. However, the FCC must take steps to review the options selected to assure that the program undertaken is meaningful and legitimate. While we understand that such effects do not compel numerical results, we feel it necessary for employers to demonstrate that such efforts were, in fact, taken.

To assist station operators with the efficacy of their approach, we suggest that the rule incorporate the following:

- \* That minority-owned or directed media outlets (including but not limited to -- newspapers, magazines, periodical, professional journals, TV/radio stations and websites) be utilized to the maximum extent possible.
- \* That job fairs be coordinated with minority community-based associations, minority professional and social organizations, national civil rights groups, specialized civic groups (such as veteran and charitable organizations), and educational institutions historically identified with minority enrollment (HBCU).
- \* That internships be established, and coordinated with local community colleges, which serve high minority populations, HBCUs, and private schools with career-oriented curriculum to develop broadcast and cable-related courses.
- \* That use of minority-owned advertising agencies and minority-owned recruitment consultants be considered favorably as a part of a licensee's overall efforts to develop and maintain an active minority employee outreach program.
- \* That a data exchange bank for potential applicants and hiring stations be developed on both a local and local level with the assistance of national organizations concerned with establishing a qualified minority talent pool.

## **RECORDKEEPING AND MONITORING**

The proposed rule seeks to substantially reduce the record keeping, and periodicity of same, required by operators to demonstrate EEO compliance.

While the NAACP can appreciate the mandate on the Agency to reduce regulatory paperwork, we believe there is a more compelling mandate to show good faith adherence to the concept of equal employment opportunity. A written record is one indicator of compliance. Regular updating and maintenance of records are essential components of authenticity. Furthermore, falsification of such records should cause the initiation of sanctions against the violating party. And operators with a history of such deviousness must not be allowed to continue using the public's airwaves. While this may be implied under FCC policy, such penalties should be expressly set forth.

Because stations frequently change formats or otherwise alter their programming operations, employment is often in a state of flux. Therefore, any employment protocols created in previous years are not likely to be prospectively valid for great amount of time in the future. And certainly not credible over an eight-year period as the proposed rule would suggest.

The NAACP agrees with the Commission that aggregate records of EEO compliance should be available on the station's website, a tool now nearly universally available, and easily accessible by potential job applicants.

While industry-wide figures may well very evidence some demographic trends, this organization believes that more precise and geographically specific information should be made publicly available with regard EEO compliance in the broadcast and cable industries. Furthermore, we feel that it would be incumbent on the Agency to make analytical comments on such reports, especially where there is evidence of apparent deficiencies in one or another aspect of industry compliance. A major market approach to such aggregate reporting would be acceptable.

Respectfully submitted this 15<sup>th</sup> day of April, 2002 on behalf of the National Association for the Advancement of Colored People,



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